

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairman Vratil at 9:30 a.m. on January 22, 2003 in Room 123-S of the Capitol.

All members were present except: Senator Pugh (A)

Committee staff present: Mike Heim, Kansas Legislative Research Department  
Jerry Ann Donaldson, Kansas Legislative Research Department  
Lisa Montgomery, Office of the Revisor of Statutes  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Murrel Bland, Editor/Publisher Wyandotte West  
Nick Tomasic, Wyandotte County District Attorney  
Jerry Palmer, Topeka Attorney  
Chris Biggs, Geary County District Attorney  
John Settle, Larned Publishing Co., and Pawnee County Attorney(written testimony only)

Others attending: see attached list

Chairman Vratil called the Committee's attention to a handout provided by staff upon Senator Oleen's request covering the Federalization of State Defamation Law as information. (Attachment 1)

The Chair called for bill introductions. Kathy Damron, representing Philip Morris, requested introduction of a bill concerning tobacco and relating to the master settlement agreement; appeal bonds in certain litigation. (Attachment 2) Senator Oleen moved to introduce the bill, seconded by Senator O'Connor, and the motion carried.

Senators Schmidt and Umbarger requested a bill to create in Kansas a crime of negligent homicide. Senator Schmidt moved to introduce the bill, seconded by Senator Umbarger, and the motion carried. (no attachment)

**SB 3 - Repealing the criminal defamation statute, K.S.A. 21-4004**

Chairman Vratil reopened the hearing on **SB 3** continued from the January 21 meeting. Conferee Bland testified in support of repealing **SB 3**. Mr. Bland said he had been a victim of defamation in Wyandotte County, but still supported the repeal of K.S.A. 21-4004 because it was a detriment to free speech and political expression.

Conferee Tomasic testified in opposition to **SB 3**. He agreed that freedom of speech was a valued constitutional right. Mr. Tomasic stated there had not been a groundswell of criminal cases filed on 21-4004, and that only one case had been filed in the entire state since 1995. He urged the Committee not to react to a jury decision that sends a message that for every action, there is a re-action, and that we will all answer for libelous conduct. (Attachment 3)

## CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE on January 22, 2003 in Room 123-s of the Capitol.

General questions and discussion followed regarding the very small number of defamation cases that actually are tried in court, whether District Court judges are protected from defamation, concern for citizens who do not have deep pockets to fight defamation in the court system, and that the case in Wyandotte County was going to be appealed. Question was asked Mr. Tomasic regarding conviction of criminal defamation, which is a Class A misdemeanor, how many people have been sentenced on a first time conviction to jail time. Mr. Tomasic responded that he did not know of any.

Conferee Palmer testified in opposition to **SB 3**, and presented an alternative view from the perspective of a citizen concerned about decriminalization of defamation. He encouraged the Committee to preserve the criminal defamation law, and suggested that it could be amended down to a Class B or C misdemeanor, but wanted it left in the statute books. Mr. Palmer stated in his written testimony that the responsibility of the Legislature was to protect its citizens' values through enactment of criminal laws, and if exceptions are to be carved out to protect other societal interests, then exceptions should be made rather than repeal of a law which preserves such a fundamental value of the citizens in their reputations. (Attachment 4)

Conferee Biggs testified in opposition to repealing the criminal defamation statute. Mr. Biggs appealed to the Committee to let the courts address the Wyandotte case being appealed, let it work itself through the court system, and the court rule on it before action is taken by the Legislature to repeal the law. He said he did not feel this was intended for publishers. He urged the Committee on behalf of the Kansas County and District Attorneys Association to allow the courts to interpret and apply the statute within the constitutional framework. (Attachment 5)

Written testimony in opposition to **SB 3** was submitted by John Settle. (Attachment 6)

Following Committee discussion and questions, the Chair closed the hearing on **SB 3**.

The minutes for the meetings of January 14, 15, and 16 were approved on a motion by Senator O'Connor, seconded by Senator Donovan, and the motion carried.

The meeting was adjourned at 10:32 a.m. The next scheduled meeting is January 23, 2003.